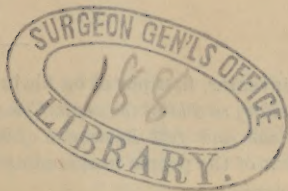


Parke, Davis & Co.



## SCIENTIFIC PHARMACY.

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### To Physicians and Pharmacists:

Since the year 1876 we have been laboring to effect the reform of an abuse existing among Manufacturing Pharmacists, in the matter of the illegitimate use of the trade-mark and patent laws for personal aggrandizement. Our position and objective arguments have been greatly misunderstood by both the medical and pharmaceutical professions, partially through ignorance of the abuse in question, and partially because of misstatements, by those opposed to our policy, with regard to the exact state of affairs. We ask as a favor, therefore, that the following statements will be carefully read:

1st. Our objections to trade-marks or patents on pharmaceutical preparations are based upon both legal and scientific reasons.

2nd. It is established by law that the proper name of an article cannot be the subject of a trade-mark, and that a patent upon a *simple aggregation* (see "Appendix," note A), of materials cannot be upheld, unless *some new result* is obtained from the aggregation.

3rd. The trade-mark is a common law right of property in a *designation*, not property in an *article*. It secures to a man his particular *brand*, his marks on his goods forever. It prevents the forgery of his *commercial signature*, and the use of his trade-mark by another. Such protection inures to the benefit of the manufacturer and to the public. The word "Durham," "May Flower," or "Banner," accompanied or unaccompanied by a design, indicates the distinguishing mark of some particular manufacture. A design, as a star, an anchor, or a ring, has its individual significance as pointing to some particular origin or make. To the public these marks prove a *certain manufacture*. To the manufacturer they are an inducement to keep up the standard of quality, since this trade mark is to the public the manufacturer's signature. In this way also the public is further protected.

4th. A patent right is an artificial right created by statute, and without foundation in common law. It amounts to a contract between the government, as representing the people, on one side, and the inventor on the other, the government insuring to the inventor a protection in the exclusive manufacture and sale of his article for a limited term of years, upon condition that

he, the inventor, first places on file in the Patent Office a *full explanation of his invention, so that at the expiration of his term of patent, the public may have the full use and full knowledge of his secret.* The design of the patent is for the benefit of the people in spreading the knowledge of new and useful arts and improvements.

5th.¶ The trade-mark is a right in a designation. It is *perpetual as to time, universal as to space, and an inherent right to property.* The patent is the right in an article *temporarily and limited as to time, restricted as to space, and confined to the country by which it is granted,* and given only upon condition that the inventor will make *full disclosure of his improvement.* The abuse which we contend against is, an attempt, under the trade-mark law, to obtain *the control of an article itself* and thus obtain a *patent* unlimited as to time, not restricted as to space, and without the consideration resulting to the people. The discoverer of the article "tobacco" might have trade-marked the name "tobacco," *provided it had not been the proper name of the article,* but he could not have obtained exclusive right to use the article itself. What more claim to merit has the inventor of a pharmaceutical compound who obtains his knowledge without regard to individual medicinal substances, from the text-books, combining these articles in different proportions or in different admixture, and then claim the discovery of something new, on which he may either take out a patent, or attempt to control the article itself by the registering of a trade-mark of the name of the preparation? (See "Appendix," Note A.)

6th. It might be asked that if there exists no legal basis for the protection of these articles, then why, in the first place, does the Patent office issue such patents, or register such trade-marks? and secondly, how is this discussion pertinent or appropriate? When an application is made for a patent the Patent office grants a patent, provided a *prima facie* case for a patent is made, and it does not attempt to decide finally as to whether the patent will hold in *case it is contested.* Then, too, the examiners at the Patent office do not claim to be learned in medicine, and that the invention really involves the production of a new compound they take to be true from the oath of the inventor.

7th. From a scientific standpoint, we regard pharmacy as a scientific profession, and as such it should conduct its operations upon a scientific platform.

The following definition of science is by President Porter, of Yale College, in his work on Psychology. "Science professes to exhibit what is actually known, or may be learned, by exact observations, precise definition, fixed terminology, classified arrangement, and rational explanation."

And pharmacy as a science should have no connection with secrecy or monopoly.

8th. Pharmacy should be entirely compatible with the science of medicine. The medical profession is bound by a code of ethics, in which it is expressly stipulated that there should be no secrecy or empiricism of any kind in medicine. (See "Appendix," Note B.) No scientific

pharmacist should manufacture or sell an article under his own label which a physician could not, in accordance with his code of ethics, prescribe.

9th. Proprietary names, like Iodia, Bromidia, Listerine, Bromo-Chloralum, and the like, are unscientific, and can never, under any circumstances, become recognized by the pharmacopœia until all secrecy as regards the preparation, or all protection as regards the name, shall be removed.

10th. The terminations "ia" and "ine" which, according to scientific nomenclature, are applied, individually, to the alkaloidal principles of plants, should not be applied to such pharmaceutical compounds as are composed of a variety of medicinal substances, whether active principles or not. This nomenclature is unscientific and liable to mislead; and the multiplication of these names will tend to ruin pharmacy from a scientific standpoint, while the only gainers are the individuals who make claims for protection under plea of the value of their inventions. (See "Appendix," Note C.)

11th. Proprietaryship in a pharmaceutical compound tends toward misrepresentation or deceit on the part of the proprietors by concealment of the actual composition thereof. An unlimited protection gives an unlimited monopoly, and, as a matter of course, competition is prevented forever. Competition tending towards the improvement of articles of manufacture being entirely repressed, it is left to the owner of the trade-marked compound to make the article as he chooses, and to represent its formula in such manner as will carry the impression that it is composed of more expensive ingredients than it really is. If competition existed, such misstatements could not be made. But few are sufficiently interested in the exposition of the faults of such compounds to undergo the expense of a chemical analysis; yet how few pharmacists can make exactly the same preparation from any of the published formulæ of these so-called trade-marked preparations, either so as to imitate the article itself or to manufacture it at a price which will enable them to compete!

12th. If this abuse is carried on to an unlimited extent, the tendency will be to lock up every possible combination of drugs which the officials of the patent office may deem to be new, and thus a physician prescribing or a pharmacist dispensing it, is liable unwittingly to infringe upon the alleged rights of some manufacturer, as in the case quoted in foot note. (See "Appendix," Note D.)

13th. Trade-marked pharmaceuticals are largely put upon the market by patent medicine houses, or individuals or firms of no practical pharmaceutical experience, and yet they have the temerity to assume the title "manufacturing chemists, and to claim that the governmental protection should be given to their so-called inventions, and that they have rendered to medical and pharmaceutical science a service which warrants this protection! We call attention to any of the published formulæ of pharmaceutical compounds, and ask any intelligent physician or pharmacist if, in his judgment, they are entitled to protection as new inventions. (See "Appendix," Note E.)

14th. The tendency of monopoly is toward extortionate prices. The tendency of competition is to lower prices. We sum up the situation from a

commercial point of view, then, that manufacturers of trade-marked pharmaceutical preparations seek by governmental protection, under a false claim of discovering a new compound, to impose upon the Medical Profession and thereby assure to themselves an absolute control of a saleable article at the expense of the public and the profession.

15th. It has been stated that we have personal reasons for waging this war. We answer frankly that we have. Our reason, however, is not, as has been attributed to us, viz., a financial one, but it is that which actuates every high-minded physician in adhering to his duties conscientiously under the Code of Ethics, to which he has subscribed and which is in strict accordance with self-respect and a scientific object. It will scarcely be denied that as a rule, physicians of ability could produce a greater income by advertising themselves by placards upon the public fences and in the newspapers as specialists in the treatment of chronic and private diseases, yet it would be thought singular if any reputable physician should so lose his self-respect as to seek this more ready road to wealth. In our own case, it will be scarcely denied that, with our great advertising facilities, we could market a trade-marked preparation monopolized to ourselves, with as much ease as any competitor, and we think any of our friends would hardly make the assertion that we have not sufficient ability among ourselves, or in our employ, to originate an invention equal to any upon the market. We can easily demonstrate that, with much less capital invested in plant, we could earn for ourselves a much greater income were we to adopt this system. We prefer, however, to conduct our business on what we believe to be an honorable basis, with due reference to our relations to the Medical Profession and to our connection with the Profession of Pharmacy. As members of the Pharmacal Profession we seek to purify that profession of abuses which have unwittingly crept in, for the most part because of the indifference or ignorance with regard to the matter in detail by both physicians and pharmacists.

16th. The objective point of our work has been to obtain from the American Medical Association a definite expression as to the bearing of the prescribing, by physicians, of trade-marked and patented pharmaceutical preparations, upon the Code of Ethics as existing. Our work in this direction has been greatly misrepresented by sophistical arguments. We have been placed in the position of attempting to dictate to the Medical Profession what they shall prescribe. We have been charged with an attempt to bribe the delegates to the convention at Richmond, with wine and cigars. We have been accused of attempting to steal from other manufacturers the legitimate fruits of their work and investments. Believing, however, in the ultimate victory of the right, we requested a delegate to introduce at the meeting of the Association at Richmond, a resolution designed to call for an expression of the Association on this important question. At the meeting at St. Paul, on June 8, 1882, the Judicial Council of the Association, to whom this resolution was referred, reported back to the Association that they considered that the Code of Ethics is sufficiently condemnatory of patent, proprietary and secret remedies, as it is also of the giving of certificates to the same, and by this action it reaffirm-

ed the position of the code in the matter. This being the objective point of our work, we leave the matter in the future to the judgment of both professions as to whether it is worth while to take further steps to correct an abuse which is condemned by scientific reasoning.

Respectfully,

Parke, Davis & Co.

DETROIT, Aug. 1, 1882.

## APPENDIX.

### NOTE A.

"A mere aggregation and bringing together of old devices or instrumentalities is not a patentable invention, unless some new result is obtained. The result of holding firmly the ends of railroad-rails by means of screws or bolts and by a plate under the ends is well known, and the simple adoption and application of a ribbed plate with the bolt screwed to its place between the ribs is only the application of two old devices without the attainment of any new result."

The above is from a recent decision of the Supreme Court of the District of Columbia and is very significant as enunciating a principle which reason and common sense must recognize in the matter of the combinations of drugs which flood the market under the protection of trade-mark names. It is one of the most incongruous facts in this whole system that a different interpretation should obtain in the matter of the aggregation of drugs than that which is given to existing laws in their application to mechanical inventions. Take, as an instance, the nostrum "Iodia". The *Druggist*, in answer to a query of a correspondent, gives the formula for its preparation as follows:

"Fluid extract stillingia, 3 ounces.  
 " prickly ash, 1 ounce.  
 " saxifraga,  $\frac{1}{2}$  ounce.  
 " yellow parilla,  $\frac{1}{2}$  ounce.  
 " blue flag,  $\frac{1}{2}$  ounce.  
 Iodide of potassium, 256 grains.  
 Pyrophosphate of iron, 256 grains.  
 Dilute phosphoric acid,  $\frac{1}{2}$  ounce.

"Dissolve the iodide in the mixture, and the iron in two ounces of hot water; add the solution gradually and lastly the phosphoric acid. Let stand twenty-four hours and filter."

What, we would ask, is there in this but such an aggregation of simples as have been familiar to the profession for time out of mind, as might very naturally suggest itself to any physician in prescribing an alterative mixture? It has not even pharmaceutical elegance to recommend it, it making such an unsightly mixture as no educated pharmacist would turn out. And yet the laws are invoked to give the firm who makes this mixture a monopoly of its sale! It is an outrage on both the public and the profession, and it is extremely doubtful, in the light of the decision which we have cited above, whether the protection which is claimed would be confirmed by the Supreme Court.—*Therapeutic Gazette*, July, 1882.

### NOTE B.

*Of the Duties of Physicians to Each other and to the Profession at large, Art. I. § 5:*

Equally derogatory to professional character is it for a physician to hold a patent for any surgical instrument or medicine; or to dispense a secret nostrum, whether it be the composition or exclusive property of himself or of others. \* \* \* \* \* It is also reprehensible for physicians to give certificates attesting the efficacy of patent or secret medicines, or in any way to promote the use of them.

### NOTE C.

The following is an alphabetic list of such of the preparations coming under this head as we can now recall, and for which professional patronage is sought:

Bromidia.	Liquirizine.
Bromo-Chloralum.	Listerine.
Caulocorea.	Malto-verbine.
Cincho-Quinine.	Meat and Quina.
Dextro-quinine.	Parvules.
Diphtherine.	Pancreatine.
Eucalyptol.	Peptonized Beef Tonic.
Fellow's Hypophosphites.	Peptodyn.
Firwein.	Protagon.
Fluid Hydrastis.	Scott's Emulsion Cod Liver Oil.
Glycerite of Kepheline.	Soluble Beef.
Hydroleine.	Specific Medicines.
Ingluvin.	Sweet Quinine.
Iodia.	Tamar Indien.
Iodo Bromide Calcium Comp.	Vitalized Phosphates.

### NOTE D.

The case of Mr. Bodenbach, a retail druggist of Buffalo, is one in point, as illustrating the dangers to which pharmacists are exposed under the abuse of the trade-mark system which we are combatting. It is concisely stated in the following quotations:

**Chicago Pharmacist and Chemist:**—"Mr. Bodenbach, a reputable pharmacist of Buffalo, has been arrested for making syrup of Dover's powder, because some patent medicine man claims the name as his trade-mark, and has been obliged to give bail to save himself from the felon's cell. Any other physician or pharmacist who dares to make this article and call it syrup of Dover's powder is liable to a similar fate. A like attempt was recently made to mulct Messrs. Parke, Davis & Co., for manufacturing fluid extract of Tonga, but the attacking party in the interests of the patent medicine trade, were glad to beat a retreat."

**Buffalo Express:**—"Christopher Bodenbach was yesterday arrested by a Deputy United States Marshal, on the complaint of Willis L. Gregory and Willis G. Gregory, charging him with infringing a certain trade-mark or name, which had been duly registered pursuant to the statute, namely, "Syrup of Dover's Powder." The defendant was subsequently arraigned before United States Commissioner Scroggs, pleaded not guilty, and gave bail in \$250 to appear for examination at 10 o'clock in the forenoon of the 31st inst."

**Pharmacist and Chemist:**—"Mr. Bodenbach is a respectable druggist, doing business at No. 942 Main street, in the city of Buffalo, N. Y. His years of study gave him no right to mix solutions of morphine and sulphate of potash, and to these add fluid extract of ipecac mixed with simple syrup! And for so doing he is taken as a felon and placed in jail! Now, if, as pharmacists, we cannot be allowed to produce "Syrup of Dover's Powder," what is the reason? Simply because of the trade-mark system, which, in a quasi manner, you are advocating."

#### NOTE E.

The following excerpts are apt illustrations of this point:

**SOLUTION OF IODO BROMIDE OF CALCIUM COMPOUND.**—The following are the results of a chemical analysis we have recently made of this preparation:

One hundred parts contain:

Calcium.....	8.72	Chlorine.....	20.35
Magnesium.....	1.35	Bromine.....	0.95
Sodium.....	1.20	Iodine.....	0.20
Potassium.....	a trace.	Salicylic acid.....	not estimated.
Aluminum.....	a trace.	Organic Matter.....	not estimated.

One fluid ounce therefore contains, approximately :

Chloride of calcium (anhydrous).....	142 grains.
Chloride of magnesium.....	30 "
Chloride of sodium.....	18 "
Bromide of magnesium.....	6 "
Iodide of potassium.....	1½ "
Total mineral constituents.....	200 "

Iron, which is mentioned on the label as one of the constituents, was not detected in the sample examined.

The quantities of iodine and bromine were not determined with rigorous exactness, but the figures given are above rather than below those which exact analysis would yield.

The bromine is assumed, on theoretical grounds, to be in combination, in the solution, with magnesium. Of course the efficacy of the preparation would not be affected by substituting bromide of sodium for the bromide of magnesium in making up an artificial iodo-bromide, and the physician would have the satisfaction of knowing exactly what he was prescribing, and the option of varying the amount of any of the constituents, if it should seem desirable. *The proportion of bromine and of iodine might be somewhat increased without rendering the prescription a very expensive one; as it is, five cents a bottle would be about a reasonable price for materials. Whatever is paid over and above this sum must be considered a tribute to the genius of the intellect that originated a combination of such extraordinary merit as to draw from reputable (?) physicians, all over the land, testimonials to its worth.*

The elixir of iodo-bromide of calcium compound contains the same ingredients as the solution of ditto ditto, and apparently in about the same relative proportions. We have not made, however, a quantitative analysis, being content with a demonstration of the fact that the amount of iodine and bromine in this preparation is not greater than in the simple solution. The principal difference seems to be that this contains a relatively small proportion of the mineral ingredients, with the addition of sugar, licorice, sassafras, and other flavoring ingredients, and, possibly, of some sarsaparilla, cundurango, or other powerful vegetable alterative.—"Laboratory Notes," by Prof. A. B. Lyons, M. D., in *Detroit Review of Medicine and Pharmacy*.

**BROMO-CHLORALUM.**—We have, not long ago, expressed the opinion that the preparation sold under this rather pretentious name is essentially a chloride of aluminum. The following are the results of an analysis sufficiently exact for any practical purpose:

One hundred parts of bromo-chloralum contain:

Calcium.....	2.11	Chlorine.....	10.84
Aluminum.....	1.84	Bromine.....	0.25
Magnesium.....	0.07	Sulphuric acid.....	0.00
Sodium.....	0.43	Silica.....	not estimated.
Potassium.....	a trace.	Organic matter.....	a trace.
Iron.....	a trace.		

One fluid ounce therefore contains, approximately:

Chloride of aluminum.....	45½ grains.
Chloride of calcium.....	28 "
Bromide of magnesium.....	1½ "
Chloride of sodium.....	5 "
Sulphate of calcium.....	1 "
Total mineral constituents.....	82 "

**LISTERINE.**—*Formula*, as published by the proprietor.—Listerine is the *essential Antiseptic* constituent of Thyme, Eucalyptus, Baptisia, Gaultheria, and Mentha Arvensis in combination. Each fluid drachm also contains *two grains of refined and purified Benzo-Boric Acid*.

*Dose*.—One teaspoonful *three or more times a day* (as indicated). As a local application to ulcers, wounds and abscesses or as a gargle, mouth-wash, inhalant or injection, it can be used *ad libitum*, diluted as desired.

Listerine is a powerful, safe and pleasant antiseptic. The beneficial results following its use in Phthisis, Diphtheria, Catarrh, Dysentery, Scarletina, Erysipelas, Small Pox, Typhoid and Malarial Fevers, etc., proves it to be a Restorative Antiseptic of the very highest order of merit. It is the most efficient agent to disinfect the hands after surgical or gynecological operations, and is *the best* injection in Leucorrhœa, etc., used in the proportion of two or three parts water and one part Listerine.

**BROMIDIA**—*Formula*, as published by the proprietor.—Every fluid drachm contains 15 grains each of pure Brom. Potas, and *purified Chloral*, and ¼ grain each of *gen. imp. ext. Cannabis Ind.* and Hyosciam.

*Dose*.—One-half to one fluid drachm in water or syrup every hour until sleep is produced.

Bromidia is the Hypnotic *par excellence*. It produces refreshing sleep, and is *exceedingly* valuable in Sleeplessness, Nervousness, Neuralgia, Headache, Convulsions, Colics, etc., and will relieve when opiates fail. Unlike preparations of opium, *it does not lock up the secretions*. In the restlessness and delirium of fevers, it is absolutely invaluable.

**IODIA**.—*Formula*, as published by the proprietor.—Iodia is a combination of Active Principles obtained from the green roots of Stillingia, Helonias, Saxifraga, Menispermum, and Aromatics. Each fluid drachm also contains *five grains Iod. Potas*, and *three grains Phos. Iron*.

*Dose*.—One or two fluid drachms (more or less, as indicated,) *three times a day* before meals.

Iodia is the *Ideal Alternative*. It has been largely prescribed in Syphilitic, Scrofulous, Cutaneous and Female Diseases, and has an established reputation as being the best alternative ever introduced to the profession.

**HYDROLEINE**.—*Formula*, as published by the proprietor.—Each dose of two teaspoonfuls, equal to 120 drops, contains:

Pure Oil.....	80 m. (drops).	Soda.....	1-3 grain.
Distilled Water.....	35 "	Boric Acid.....	1-4 "
Soluble Pancreatin.....	5 grains.	Hyochoic Acid.....	1-20 "

*Dose*.—Two tablespoonfuls alone or mixed with twice the quantity of soft water, to be taken thrice daily with meals.

**CAULOCOREA** (Proprietor's statement), the most important Therapeutic Agent ever presented to the medical profession in the treatment of the Diseases of the Female Reproductive Organs.—*Formula*.—Caulocorea is composed of the active principles of Caulophyllum Thalictroides, Viburnum Opulus, Prunifolium, Dioscorea Villosa, Mitchella Repens, Aletris Farinosa, so combined with Spts. Etheris Comp. and Aromatics as to form a most perfect and agreeable Elixir, and greatly increase the antispasmodic and onic effect.

**VITALIZED HYPO-PHOS-PHITES**—Prepared from the Phosphoid Principles of the Ox-Brain and Wheat Germ. Nature's nerve tonic—not a laboratory compound.